



State of California

OFFICE OF THE INSPECTOR GENERAL

MATTHEW L. CATE, INSPECTOR GENERAL

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**Shooting of inmate at Wasco State Prison was reasonable
and did not violate policy**

The Office of the Inspector General — the watchdog for California's correctional system — today concurred with the earlier findings of a Department of Corrections internal affairs investigator and two other investigative bodies that the correctional officer who shot a sponge projectile at Wasco State Prison inmate Daniel Provencio on January 16th acted reasonably and did not violate department use-of-force policy by his actions. Provencio was struck in the head by the projectile and died of his injuries almost two months later.

Announcing the results of a five-week special review into the circumstances surrounding the incident by the Inspector General's Bureau of Independent Review, Inspector General Matt Cate said the earlier investigations were thorough and timely and showed no evidence of bias. The Inspector General did find, however, that inadequate weapons training at the prison and the peculiarities of the weapon used in the shooting may have contributed to the inmate's death.

The shooting took place as an officer, who was alone on the floor with about 38 inmates, tried to break up a fight that had erupted during a Sunday evening meal after one inmate dumped food on another inmate and hit him on the head with a tray.

As the two inmates began fighting, the officer ordered all of the inmates down to the floor. Most of the inmates complied, but Provencio, who had not been involved in the fight and was later determined

to be drunk, instead began moving toward the officer in what numerous witnesses, including both officers and inmates, described as a hostile and threatening manner.

Fearing for the safety of the officer on the floor, a second officer in an elevated control booth fired a direct-impact sponge projectile at Provencio from a 40mm launcher—a weapon intended to be non-lethal. The officer, who shot from a distance of 53 feet about 12 feet above the floor, said he aimed for the inmate’s upper right thigh, but the projectile instead struck Provencio in the forehead.

Provencio went down briefly, but got up again and continued to resist other officers who had been called to the scene. The situation threatened to spin out of control as inmates began yelling “Remember Chino” and “Get that m---- like they did in Chino”—apparent references to the fatal stabbing of a correctional officer by an inmate six days earlier at the California Institution for Men.

Provencio was sprayed with pepper spray, handcuffed, and taken to the prison infirmary, where he fought efforts of medical personnel to treat his injury. After he lost consciousness he was taken by ambulance to Mercy Hospital in Bakersfield where his blood alcohol level was determined to be .152 percent — almost twice the legal limit in California for driving a motor vehicle. He went into a coma and ultimately died on March 4th. The medical examiner listed the cause of death as blunt force trauma to the head.

An investigation by the Office of Internal Affairs of the Department of Corrections, which included interviews of 112 witnesses, found no criminal misconduct on the part of the officer who shot the projectile.

Another investigation by the Law Enforcement and Investigations Unit of the Department of Corrections concluded that the officer had complied with department policy, and a third investigation by the Wasco State Prison use-of-force committee found that the officer acted in a reasonable manner under the circumstances.

The Office of the Inspector General agreed with those conclusions, but also identified factors that may have contributed to the inmate’s death by causing him to be hit in the head by the projectile instead of in the leg. Investigators found that the 40mm launcher has a longer than normal trigger pull, which can cause the shooter to unintentionally raise the point of aim. They also noted that direct-impact projectiles fired from a distance of 53 feet in a slightly downward angle tend to rise four to

five inches above the point of aim. Those tendencies, together with Provencio's forward movement, all contributed to the officer's inaccurate placement of the projectile.

In addition, the Bureau of Independent Review found the training received by Wasco State Prison correctional officers on direct-impact weapons to be inadequate. The investigators determined that because the ammunition for the 40mm launcher costs \$20 to \$25 per round, officers are rarely, if ever, given an opportunity to shoot live rounds in training, meaning that the first time they shoot a live round may be in an emergency.

The Bureau of Independent Review also faulted the Wasco State Prison staff for not conducting thorough searches of inmate cells to deter inmates from manufacturing alcohol from fruit, sugar, and other substances taken from the kitchen and dining areas. Had they done so, the investigators concluded, they might have averted or detected Provencio's intoxication as well as that of other inmates.

The full text of the Inspector General's public report of the review can be viewed and downloaded from the Office of the Inspector General's web site at <http://www.oig.ca.gov/>. To view the report on the website, click on the report title, "Special Review Into the Death of Inmate Daniel Provencio on January 16, 2005 at Wasco State Prison," on the home page or on the link entitled "Reports – Audit and Special Review Reports" under "Wasco State Prison."

The Office of the Inspector General is an independent state agency responsible for oversight of the California correctional system, including the Department of Corrections and the California Youth Authority. The office carries out its mission by auditing and investigating correctional organizations under the Youth and Adult Correctional Agency to uncover criminal conduct, administrative wrongdoing, poor management practices, waste, fraud, and other abuses by staff, supervisors, and management.

The special review was conducted under the authority provided to the Inspector General's Bureau of Independent Review by Penal Code section 6131, which requires the bureau to provide contemporaneous oversight of investigations conducted by the Department of Corrections, Office of Internal Affairs.

The Bureau of Independent Review was established inside the Office of the Inspector General as a result of a settlement between the Department of Corrections and plaintiffs in a court action involving illegal use of force by correctional officers at Pelican Bay State Prison.

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